

1 LUKE A. BUSBY, ESQ
Nevada Bar No. 10319
2 316 California Ave.
Reno, Nevada 89509
3 775-453-0112
luke@lukeandrewbusbyltd.com

4 *Attorney for the Plaintiff*

5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 * * *

8 SHANNON CARTER,

Case No.: 2:17-cv-01628-RFB-EJY

9 Plaintiff,

PRETRIAL ORDER

10 vs.

11 S. BEAN, BITAR, et al.,

12 Defendants.

13 _____/

14 After pretrial proceedings in this case,

15 **IT IS ORDERED:**

16 **I. This is an action for**

17
18 On September 28, 2018, Plaintiff SHANNON CARTER has filed an amended
19 complaint alleging the following claims: (1) a violation of the Eighth Amendment's
20 protection against cruel and unusual punishment against Defendants SHERRIE BEAN,
21 a former Nevada Department of Corrections (NDOC) dental assistant (now an NDOC
22 corrections officer), DR. PAUL BITAR, a former NDOC Dentist, NDOC Associate
23 Warden JENNIFER NASH, and Former NDOC Warden BRIAN WILLIAMS (now an
24 NDOC Deputy Director); (2) a Fourteenth Amendment Substantive Due Process claim
25 against Officer SHERRIE BEAN, Dr. PAUL BITAR, Associate Warden JENNIFER NASH,
26 Director BRIAN WILLIAMS, NDOC Nurse ALBERTO BUENCAMINO, Former NDOC
27
28

1 Associate Warden JERRY HOWELL, and NDOC Director JAMES DZURENDA; and (3)
2 a First Amendment retaliation claim against Officer SHERRIE BEAN and DR. PAUL
3 BITAR. Mr. Carter alleges that Defendants have failed to timely address his requests
4 for dental treatment, the denial of which allegedly caused him extreme pain.

5
6 On September 26, 2019, the Court screened Carter's amended complaint
7 (ECF No. 44) and allowed: (1) the Eighth Amendment claims to proceed against
8 Defendants Officer Bean, Dr. Bitar, Associate Warden Nash, and Associate Director
9 Williams; (2) the Substantive Due Process claims to proceed against Defendants
10 Officer Bean, Dr. Bitar, Associate Warden Nash, Director Williams, Dr. Aranas, Nurse
11 Buencaminio, Stewart, Mr. Howell, and Director Dzurenda; and (3) the First
12 Amendment claim against Defendants Officer Bean and Dr. Bitar. On October 8,
13 2019, Defendants Director Dzurenda, Associate Warden Nash, Director Williams, Mr.
14 Howell, Dr. Biter, Officer Bean and Nurse Buencamino answered (ECF No. 45) the
15 amended complaint and denied all of Mr. Carter's material allegations as untrue.
16
17

18 Carter filed a motion for summary judgment on November 5, 2019 (ECF No.
19 49). Answering Defendants filed a motion for summary judgment on July 30, 2020
20 (ECF No. 69). In an order dated November 30, 2020 (ECF No. 87), the Court denied
21 Carter's Motion for summary judgement. The Court granted Defendants' motion for
22 summary judgment with respect to Plaintiff's Eighth Amendment claims against
23 Defendants HOWELL, BUENCAMINO, STEWART, ARANAS, NASH, WILLIAMS, and
24 DZURENDA. The Court denied Defendants' motion for summary with respect to the
25 Eight Amendment and First Amendment claims against Defendants BEAN and BITAR.
26
27
28

1 Carter maintains that since Defendants' motion for summary judgment did not
2 address the Fourteenth Amendment Substantive Due Process claim, that claim is
3 alive. Defendants maintain that even though motion for summary judgment did not
4 expressly address Carter's Substantive Due Process claim, that claim is precluded
5 against all Defendants, with the exception of Defendants Officer Bean and Bitar, based
6 on this Court's grant of summary judgment on the Eighth Amendment claim.
7 Defendants further maintain that this Court is obligated to sua sponte dismiss the
8 substantive due process claims against all Defendants because such claims are
9 encompassed by the Eighth Amendment and therefore are not actionable.
10
11

12 **II. Statement of jurisdiction:**

13 This action arises under 42 U.S.C. § 1983. This Court has jurisdiction of this
14 action under federal law pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C.
15 §§1331 and 1343(3). The Court has personal jurisdiction over the Defendants,
16 because the alleged incident described below occurred within this District. Venue is
17 proper pursuant to 28 U.S.C. Section 1391 in the District of Nevada because the acts
18 giving rise to the Plaintiff's claims occurred in this District.
19
20

21 **III. The following facts are admitted by the parties and require no proof:**

22 1. At all relevant times, Plaintiff CARTER was incarcerated at the Nevada
23 Department of Corrections (NDOC), High Desert State Prison (HDSP).
24

25 2. On February 20, 2016, Plaintiff CARTER submitted a medical kite to
26 obtain dental care.
27
28

1 3. In March and April 2016, Plaintiff CARTER submitted four medical
2 request form requesting dental care, and staff responded to each request indicating
3 that an appointment was scheduled.

4 4. An appointment for Plaintiff CARTER was scheduled for April 14, 2016,
5 but the appointment was cancelled due to a lockdown of the prison.

6
7 5. On April 21, 2016, Plaintiff CARTER was examined by Dr. Mangapit, a
8 member of the High Desert State Prison ("HDSP") dental staff, and Dr. Mangapit
9 determined that teeth #18, #19, and #31 had occlusal caries (decay on top of teeth),
10 and CARTER was scheduled for fillings, and was prescribed ibuprofen, 200 mg.

11
12 6. On May 10, 2016, Plaintiff CARTER submitted an informal grievance
13 requesting to be seen by dental staff for his dental treatment.

14 7. On June 7, 2016, CARTER's grievance was denied finding that dental
15 notes indicated that Plaintiff needed fillings, he was on the dental list, and would be
16 seen at the next available appointment.

17
18 8. On June 16, 2016, Plaintiff CARTER was examined by Dr. Mangapit, was
19 given anesthetic, received a filling in tooth #31, had (4) x-rays taken, and was
20 scheduled to have another filling.

21
22 9. On June 26, 2016, Plaintiff CARTER appealed the denial of his May 10th
23 informal grievance to the first level, complaining that it should not take 147 days to
24 complete his dental treatment.

25
26 10. On July 26, 2016, BUENCAMINO denied the first level grievance finding
27 that, based on the medical records, Plaintiff CARTER was evaluated, examined, given
28

1 the necessary treatment by the dentist, and x-rays were performed. Plaintiff was
2 advised to submit a kite and then he would be scheduled accordingly.

3 11. On August 17, 2016, Plaintiff CARTER appealed his grievance to the
4 second level, again complaining that his dental treatment had not been completed.

5
6 12. On September 1, 2016, Plaintiff CARTER was examined Dr. Mangapit,
7 was given anesthetic, and received a filling in tooth #19.

8
9 13. An appointment to have Plaintiff CARTER's third cavity filled was
10 scheduled for October 6, 2016, but the appointment was canceled due to an
11 emergency recall.

12
13 14. On November 16, 2016, Plaintiff's August 17th appeal to a second level
14 was denied, finding Plaintiff CARTER had received dental treatment. Plaintiff was
15 advised to submit a kite about his dental complaint and service would be rendered
16 appropriately.

17
18 15. On December 8, 2016, Plaintiff CARTER filed a complaint in the Eighth
19 Judicial District Court, Clark County Nevada, Case No. A-16-747779-C ("State Court
20 Action") alleging that defendants violated his Eighth Amendment rights with respect
21 to the dental treatment he had received.

22
23 16. On January 6, 2017, Plaintiff CARTER submitted an inmate request form
24 to the medical director indicating that he was filing a civil complaint on the alleged
25 constitutional violation made by dental, and requested the names of "SB" and "CM"
26 who signed kites and the names of the dental assistant and the dentist to inform the
27 court of those names.
28

1 17. On February 1, 2017, Plaintiff CARTER presented himself to the HDSP
2 dental department when Defendants Dr. BITAR and BEAN were present.

3 18. On February 22, 2017, Plaintiff CARTER filed an amended complaint in
4 the State Court action asserting an Eighth Amendment violation against Dr. Mangapit
5 and Defendant BEAN based on the alleged delay dental treatment.
6

7 19. On April 18, 2017, Plaintiff CARTER submitted an informal grievance
8 alleging retaliation, on or about February 1, 2017, by refusing to treat his infected
9 tooth.
10

11 20. On April 18, 2017, the April 18, 2017 informal grievance was returned as
12 an untimely submission.

13 21. On August 28, 2019, Plaintiff CARTER voluntarily dismissed his State
14 Court Action, and his amended complaint was dismissed with prejudice.
15

16 **IV. The following facts, though not admitted, will not be contested at trial**
17 **by evidence to the contrary:**

18 1. On October 10, 2018, the Court held a hearing and ordered that counsel
19 for the Defendants make the arrangements to have the plaintiff evaluated by a dental
20 professional to address the dental issues that plaintiff has to be addressed within a
21 two-week time frame. Defendants contest the admissibility of this fact.
22

23 2. On October 17, 2018, Carter's tooth #18 was extracted. Defendants
24 contest the admissibility of this fact.
25

26 **V. The following are the issues of fact to be tried and determined at trial:**

27 a. **Plaintiff's Issues of Fact to be Tried and Determined Upon Trial**

28 1. Whether the Defendants acted under color of state law.

1 2. Whether CARTER faced a substantial risk of serious harm.

2 3. Whether Defendants BITAR and BEAN were deliberately indifferent to
3 CARTER'S risk of serious harm, that is, Defendants BITAR and BEAN knew of that risk
4 of serious harm and failed to take reasonable measures to address it.

5 4. Whether Defendants' failure to act caused serious harm to CARTER.

6 5. Whether BEAN, BITAR, NASH, WILLIAMS, BUENCAMINO, HOWELL,
7 and DZURENDA made an intentional decision regarding the denial of needed dental
8 care.
9

10 6. Whether the denial of needed dental care by BEAN, BITAR, NASH,
11 WILLIAMS, BUENCAMINO, HOWELL, and DZURENDA put CARTER at substantial risk
12 of suffering serious harm.
13

14 7. Whether BEAN, BITAR, NASH, WILLIAMS, BUENCAMINO, HOWELL,
15 and DZURENDA did not take reasonable available measures to abate or reduce the
16 risk of serious harm, even though a reasonable officer under the circumstances would
17 have understood the high degree of risk involved—making the consequence of the
18 Defendants' conduct obvious.
19

20 8. Whether by not taking such measures, the BEAN, BITAR, NASH,
21 WILLIAMS, BUENCAMINO, HOWELL, and DZURENDA caused Mr. Carter's injuries.
22

23 9. Whether Defendants BITAR's and BEAN's actions in refusing dental
24 treatment would chill a person of ordinary firmness from continuing to engage in the
25 protected activity under the First Amendment.
26

27 10. Whether Mr. Carter's protected activity was a substantial or motivating
28 factor in the conduct of Defendants BITAR and BEAN.

b. Defendants' Issues of Fact to be Tried and Determined Upon Trial

1. Whether Plaintiff CARTER exhausted his administrative remedies with respect to his claims against Defendants.

2. Whether Plaintiff CARTER informed Defendants Dr. BITAR and BEAN on February 1, 2017, that the only reason for his visit to the dental department was to secure names to be used in a lawsuit and that he did not have any current dental treatment needs.

3. Whether Defendants Dr. BITAR or BEAN were aware on February 1, 2017, that Plaintiff Carter had filed a lawsuit concerning his dental care, or the parties to be named to the lawsuit.

4. Whether Defendants Dr. BITAR and BEAN took an adverse action against Plaintiff CARTER on February 1, 2017.

5. Whether the actions taken by Defendants Dr. BITAR and BEAN would chill an inmate's exercise of his First Amendment Rights.

6. Whether the actions taken by Defendants Dr. BITAR and BEAN served a legitimate correctional goal.

7. Whether Plaintiff Carter was required to submit a medical request for a new dental appointment when a previous appointment had been canceled, before a new appointment would be scheduled.

8. Whether Plaintiff Carter objectively suffered a serious medical need with respect to his dental care on February 1, 2017.

9. Whether Defendants subjectively knew of and disregarded an excessive risk to Plaintiff CARTER's health on February 1, 2017.

1 10. Whether non-dentist Defendants had any ability to determine the dental
2 treatment to be provided to Plaintiff CARTER.

3 11. Whether Defendants had any involvement in Plaintiff Carter's dental
4 treatment.

5 12. Whether non-dentist Defendants had the ability to determine whether
6 Plaintiff CARTER suffered from a serious medical need or what the best course of
7 treatment for his dental needs would be.

8 13. Whether non-dentist Defendants relied upon dentists to determine the
9 appropriate dental care.
10

11 14. Whether Plaintiff CARTER suffered any damages as a result of
12 Defendants' actions.
13

14 **VI. The following are the issues of law to be tried and determined at trial.**
15

16 **(a) Plaintiff's Statement of Issue of Law to be tried and determined at trial:**
17

18 1. Whether Defendants BEAN, BITAR, NASH, WILLIAMS, BUENCAMINO,
19 HOWELL, and DZURENDA, as state officials in their individual capacities violated
20 CARTER's Constitutional rights by delaying and denying Mr. Carter's repeated
21 requests for dental care. 42 U.S.C. § 1983 provides that any person or person who,
22 under color of state law, deprives another of any rights, privileges, or immunities
23 secured by the Constitution or laws of the United States shall be liable to the injured
24 party.
25

26 2. Whether Defendants BITAR and BEAN violated Mr. Carter's rights under
27 the Eighth Amendment to medical care for a serious medical need by deliberate
28

1 indifference to his dental needs by unreasonable delay in treating CARTER's dental
2 needs and when they refused to provide needed dental care at Mr. Carter's February
3 1, 2017 appointment. Under the Eighth Amendment, a convicted prisoner has the
4 right to be free from "cruel and unusual punishments," including the right to timely
5 dental care. "Deliberate indifference" is the conscious choice to disregard the
6 consequences of one's acts or omissions. At the close of evidence the Plaintiff intends
7 to move under Rule 50 for judgment as a matter of law.
8

9 3. Whether Defendants BEAN, BITAR, NASH, WILLIAMS, BUENCAMINO,
10 HOWELL, and DZURENDA violated Mr. Carter's substantive due process rights under
11 the Fourteenth Amendment for failure to provide needed dental care despite his
12 serious need for care in a manner that was objectively unreasonable. At the close of
13 evidence the Plaintiff intends to move under Rule 50 for judgment as a matter of law.
14

15 4. Whether Defendants BITAR and BEAN violated Mr. Carter's rights under
16 the First Amendment when they refused to treat Mr. Carter at his February 1, 2017
17 appointment in retaliation for Mr. Carter filing a lawsuit in state court. At the close of
18 evidence the Plaintiff intends to move under Rule 50 for judgment as a matter of law.
19

20
21 **(b) Defendants' Statement of Issues of Law to be tried and determined at**
22 **trial:**

23 1. Whether Plaintiff CARTER's substantive due process claims challenging
24 the lack of adequate medical care should be dismissed because these claims are
25 encompassed by the Eighth Amendment which provides explicit protection against
26 inadequate medical care.
27
28

1 2. Whether dismissal of the State Action with prejudice precludes claims for
2 violation of the Eighth Amendment in this action which occurred before the filing of
3 the amended Complaint in the state action.

4 3. Whether Plaintiff CARTER's substantive due process claims are
5 precluded against all Defendants, with the exception of Defendants Dr. BITAR and
6 BEAN, based on this Court grant of summary judgment on the Eighth Amendment
7 claims in favor of those Defendants.

8 4. Whether Plaintiff CARTER has met his burden of proof on the each of the
9 following elements, for each individual Defendant, required to establish a violation of
10 Eighth Amendment: (1) that Plaintiff CARTER suffered from an objectively serious
11 medical need: (2) that each individual Defendant subjectively knew of and disregarded
12 an excessive risk to Plaintiff CARTER's health; and (3) that each individual defendant's
13 actions were both the actual and proximate cause of Plaintiff CARTER'S injuries.

14 5. Whether Plaintiff CARTER has met his burden of proof on the each of the
15 following elements, for each individual Defendant, required to establish a claim of
16 retaliation under the First Amendment: (1) that each individual Defendant took some
17 adverse action against Plaintiff CARTER (2) because of (3) that his protected conduct,
18 and that such action (4) chilled the Plaintiff CARTER'S exercise of his First Amendment
19 rights, and (5) the action did not reasonably advance a legitimate correctional goal.

20 6. Whether Plaintiff CARTER has met his burden of proof on the each of the
21 following elements, for each individual Defendant, required to establish a substantive
22 due process violation: (1) that Plaintiff CARTER suffered from an objectively serious
23 medical need: (2) that each individual Defendant subjectively knew of and disregarded
24
25
26
27
28

1 an excessive risk to Plaintiff CARTER's health so as to shock the conscience; and (3)
 2 that each individual defendant's actions were both the actual and proximate cause of
 3 Plaintiff CARTER'S injuries.

4 7. Whether Plaintiff CARTER has met his burden of proof on the each of the
 5 following elements, for each individual Defendant, required to overcome Defendants
 6 entitlement to qualified immunity: (1) that that Defendants violated Plaintiff Carter's
 7 constitutional right, and (2) that the right violated was 'clearly established' at the time
 8 of the challenged conduct, in a particularized sense so that the contours of the right
 9 was clear to a reasonable official.
 10

11 VII. Exhibits

12 a. The following exhibits are stipulated into evidence in this case and may be
 13 so marked by the clerk:
 14

15 1. Plaintiff's Exhibits

16 1. April 18, 2017, Nevada Department of Corrections Improper Grievance
 17 Memo.
 18

19 2. Dental Records of Shannon Carter.
 20

21 2. Defendants' Exhibits

22 1. Inmate Request Form dated 1/6/17.
 23

24 b. As to the following exhibits, the party against whom the same will be
 25 offered objects to their admission on the grounds stated:

26 i. Plaintiff's exhibits and objections to them:

27 1. Nevada Department of Corrections Human Resources Dental Assistant
 28 II Job Description. Objection: Relevance.

1 2. February 20, 2016, Medical kite submitted by Shannon Carter to Nevada
2 Department of Corrections. Objection: Relevance; Probative value outweighed by
3 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
4 of the matter asserted.

5
6 3. March 5, 2016, Inmate request form requesting dental treatment
7 submitted by Shannon Carter. Objection: Relevance; Probative value outweighed by
8 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
9 of the matter asserted.

10
11 4. March 30, 2016, Inmate request form requesting dental treatment
12 submitted by Shannon Carter. Objection: Relevance; Probative value outweighed by
13 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
14 of the matter asserted.

15
16 5. April 8, 2016, Inmate request form requesting dental treatment submitted
17 by Shannon Carter. Objection: Relevance; probative value outweighed by prejudicial
18 effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth of the
19 matter asserted.

20
21 6. April 17, 2016, Inmate request form requesting dental treatment
22 submitted by Shannon Carter. Objection: Relevance; Probative value outweighed by
23 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
24 of the matter asserted.

25
26 7. April 30, 2016, Inmate request form requesting dental treatment
27 submitted by Shannon Carter. Objection: Relevance; Probative value outweighed by
28

1 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
2 of the matter asserted.

3 8. May 2, 2016, Informal Grievance submitted by Shannon Carter alleging
4 deliberate indifference to his serious medical need. Objection: Relevance; Probative
5 value outweighed by prejudicial effect under FRE 401 and 402; Hearsay, cannot be
6 used to prove the truth of the matter asserted.
7

8 9. June 10, 2016, Inmate Grievance Report denying informal grievance.
9 Objection: Relevance.
10

11 10. June 24, 2016, First Level Grievance submitted by Shannon Carter
12 alleging Nevada Department of Corrections policy was deliberate and indifferent to his
13 serious medical need. Objection: Relevance; Probative value outweighed by
14 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
15 of the matter asserted.
16

17 11. July 27, 2016, Inmate Grievance Report denying first level grievance.
18 Objection: Relevance. Objection: Relevance; Probative value outweighed by
19 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
20 of the matter asserted.
21

22 12. August 9, 2016, Second Level Grievance submitted by Shannon Carter
23 requesting treatment for his serious medical needs. Objection: Relevance; Probative
24 value outweighed by prejudicial effect under FRE 401 and 402; Hearsay, cannot be
25 used to prove the truth of the matter asserted.
26

27 13. November 18, 2016, Inmate Grievance Report denying second level
28 grievance. Objection: Relevance.

1 14. July 16, 2017, Inmate request form with respect to dental treatment
2 submitted by Shannon Carter. Objection: Relevance; Probative value outweighed by
3 prejudicial effect under FRE 401 and 402; Hearsay, cannot be used to prove the truth
4 of the matter asserted.

5 15. Transcript of Proceedings from District Court, Clark County, NV, on July
6 11, 2017. Objection: Relevance; Hearsay.

7 16. Medical Directive Number 434, Effective April 2015, Consent and Refusal
8 of Treatment. Objection: Relevance.

9 17. Medical Directive Number 408: Procedures for Dental Services.
10 Objection: Relevance.

11 18. Blank Inmate Refusal Form. Objection: Relevance.

12 19. February 1, 2017 Affidavit of Service on Sherrie Bean in state Court
13 matter Objection: Relevance; probative value outweighed by prejudicial effect under
14 FRE 401 and 402; Hearsay. .

15
16
17
18 **ii. Defendant's exhibits and objections to them.**

19 1. Medical Kite dated 1/22/17. Objection: Relevance, probative value
20 outweighed by prejudicial effect under FRE 401 and 402.

21 2. Medical Kite dated 2/18/17. Objection: Relevance, probative value
22 outweighed by prejudicial effect under FRE 401 and 402.

23 3. Medical Kite dated 3/24/17. Objection: Relevance, probative value
24 outweighed by prejudicial effect under FRE 401 and 402.

25 4. Medical Kite dated 7/5/17. Objection: Relevance, probative value
26 outweighed by prejudicial effect under FRE 401 and 402.

1 5. Medical Kite dated 10/24/17. Objection: Relevance, probative value
2 outweighed by prejudicial effect under FRE 401 and 402.

3 6. Medical Kite dated 3/11/18. Objection: Relevance, probative value
4 outweighed by prejudicial effect under FRE 401 and 402.

5 7. Plaintiff CARTER's Grievance History. Objection: Relevance, probative
6 value outweighed by prejudicial effect under FRE 401 and 402.

7 8. Inmate Request Form dated 1/12/17. Objection: Relevance, probative
8 value outweighed by prejudicial effect under FRE 401 and 402.

9 9. Inmate Request Form dated 1/22/17. Objection: Relevance, probative
10 value outweighed by prejudicial effect under FRE 401 and 402.

11 10. Inmate Request Form dated 2/22/17. Objection: Relevance, probative
12 value outweighed by prejudicial effect under FRE 401 and 402.

13 11. Inmate Request Form dated 3/14/17. Objection: Relevance, probative
14 value outweighed by prejudicial effect under FRE 401 and 402.

15 12. Inmate Request Form dated 3/30/17. Objection: Relevance, probative
16 value outweighed by prejudicial effect under FRE 401 and 402.

17 13. Inmate Request Form dated 4/1/17. Objection: Relevance, probative
18 value outweighed by prejudicial effect under FRE 401 and 402.

19 14. Inmate Request Form dated 4/13/17. Objection: Relevance, probative
20 value outweighed by prejudicial effect under FRE 401 and 402.

21 15. Inmate Request Form dated 6/4/17. Objection: Relevance, probative
22 value outweighed by prejudicial effect under FRE 401 and 402.

1 16. Inmate Request Form dated 6/14/18. Objection: Relevance, probative
2 value outweighed by prejudicial effect under FRE 401 and 402.

3 17. Inmate Request Form dated 6/15/18. Objection: Relevance, probative
4 value outweighed by prejudicial effect under FRE 401 and 402.

5 18. Inmate Request Form dated 7/25/18. Objection: Relevance, probative
6 value outweighed by prejudicial effect under FRE 401 and 402.

7 19. Inmate Request Form dated 7/26/18. Objection: Relevance, probative
8 value outweighed by prejudicial effect under FRE 401 and 402.

9 20. Inmate Request Form dated 7/29/18. Objection: Relevance, probative
10 value outweighed by prejudicial effect under FRE 401 and 402.

11 21. Inmate Request Form dated 8/6/18. Objection: Relevance, probative
12 value outweighed by prejudicial effect under FRE 401 and 402.

13 22. Inmate Request Form dated 8/9/18. Objection: Relevance, probative
14 value outweighed by prejudicial effect under FRE 401 and 402.

15 23. Inmate Request Form dated 9/1/18. Objection: Relevance, probative
16 value outweighed by prejudicial effect under FRE 401 and 402.

17 24. Plaintiff CARTER's Historical Bed Assignments. Objection: Relevance,
18 probative value outweighed by prejudicial effect under FRE 401 and 402, not properly
19 disclosed under FRCP 26.

20 25. Plaintiff CARTER's Inmate Search report. Objection: Relevance,
21 probative value outweighed by prejudicial effect under FRE 401 and 402, not properly
22 disclosed under FRCP 26, inadmissible under FRE 609(b) and 404.
23
24
25
26
27
28

1 26. CARTER's Judgment of Conviction. Objection: Relevance, probative
2 value outweighed by prejudicial effect under FRE 401 and 402, not properly disclosed
3 under FRCP 26, inadmissible under FRE 609(b) and 404.

4 27. AR 631 – Dental Services. Objection: Relevance, probative value
5 outweighed by prejudicial effect under FRE 401 and 402, not properly disclosed under
6 FRCP 26.

7 28. AR 740 – Inmate Grievance Procedure. Objection: Relevance, probative
8 value outweighed by prejudicial effect under FRE 401 and 402, not properly disclosed
9 under FRCP 26.

10 29. AR 552 – Intra-Departmental Transfers. Objection: Relevance, probative
11 value outweighed by prejudicial effect under FRE 401 and 402, not properly disclosed
12 under FRCP 26.

13 30. State Court Complaint, Case No. A-16-747779-C. Objection: Relevance,
14 probative value outweighed by prejudicial effect under FRE 401 and 402, not properly
15 disclosed under FRCP 26.

16 31. State Court Complaint, Case No. A-16-747779-C. Objection: Relevance,
17 probative value outweighed by prejudicial effect under FRE 401 and 402, not properly
18 disclosed under FRCP 26.

19 32. State Court Notice of Entry of Order of Dismissal, Case No. A-16-747779-
20 C. Objection: Relevance, probative value outweighed by prejudicial effect under FRE
21 401 and 402, not properly disclosed under FRCP 26.

22
23
24
25
26
27 **(c) Electronic evidence:**

28 None.

1 **(d) Depositions:**

2 **i. Plaintiff will offer the following depositions:** Other than the potential use
3 of deposition testimony for impeachment purposes, none.
4

5 **ii. Defendant will offer the following depositions:** Other than the potential
6 use of deposition testimony for impeachment purposes, none

7 **(e) Objections to depositions:**

8 **i. Defendant objects to plaintiff's depositions as follows: None**

9 **ii. Plaintiff objects to defendant's depositions as follows: None**

10 **VIII. The following witnesses may be called by the parties at trial:**

11 **(a) Plaintiff's Lay Witnesses:**

12 1. Shannon Carter – c/o Luke Andrew Busby, Ltd. 316 California Ave, Reno
13 NV 89509 – Mr. Carter is the plaintiff in this matter and may testify as to his knowledge
14 of the facts in this case, including but not limited to, the circumstances surrounding
15 his requests for dental treatment, the refusal of NDOC and its employees and/or
16 associates to provide that treatment and his pain, infected teeth, and bleeding gums
17 as a result of the delay in medical treatment.
18

19 2. Any witness named by the Defendants.
20

21 **Plaintiff's Expert Witnesses**

22 1. None
23

24 **(b) Defendant's witnesses:**

25 1. Officer Scherrie Bean – c/o Chris Davis, Senior Deputy Attorney General,
26 Office of the Attorney General, 555 E. Washington Ave, Ste 3900, Las Vegas, Nevada
27
28

1 89101. Officer Bean will testify as to her involvement in Plaintiff Carter's dental care
2 as a former NDOC dental assistant and the practices and procedures for providing
3 dental care to inmates

4 2. Dr. Paul Bitar – c/o Chris Davis, Senior Deputy Attorney General, Office
5 of the Attorney General, 555 E. Washington Ave, Ste 3900, Las Vegas, Nevada 89101.
6 Dr. Bean will testify as to his involvement in Plaintiff Carter's dental care and the
7 practices and procedures for providing dental care to inmates.
8

9 3. NDOC Associate Warden Jennifer Nash, c/o Chris Davis, Senior Deputy
10 Attorney General, Office of the Attorney General, 555 E. Washington Ave, Ste 3900,
11 Las Vegas, Nevada 89101. Associate Warden Nash will testify as to her lack of
12 involvement in Plaintiff Carter's dental care and the practices and procedures for
13 responding to grievances.
14

15 4. NDOC Deputy Director Brian Williams, c/o Chris Davis, Senior Deputy
16 Attorney General, Office of the Attorney General, 555 E. Washington Ave, Ste 3900,
17 Las Vegas, Nevada 89101. Deputy Director Williams will testify as to his lack of
18 involvement in Plaintiff Carter's dental care and the practices and procedures for
19 responding to grievances.
20

21 5. Alberto Buencamino, c/o Chris Davis, Senior Deputy Attorney General,
22 Office of the Attorney General, 555 E. Washington Ave, Ste 3900, Las Vegas, Nevada
23 89101. Nurse Buencamino will testify as to his lack of involvement in Plaintiff Carter's
24 dental care and the practices and procedures for responding to grievances
25

26 6. Former NDOC Warden Jerry Howell, c/o Chris Davis, Senior Deputy
27 Attorney General, Office of the Attorney General, 555 E. Washington Ave, Ste 3900,
28

1 Las Vegas, Nevada 89101. Mr. Howell will testify as to his lack of involvement in
2 Plaintiff Carter's dental care and the practices and procedures for responding to
3 grievances

4 7. NDOC Director James Dzurenda, c/o Chris Davis, Senior Deputy
5 Attorney General, Office of the Attorney General, 555 E. Washington Ave, Ste 3900,
6 Las Vegas, Nevada 89101. Mr. Howell will testify as to his lack of involvement in
7 Plaintiff Carter's dental care and the practices and procedures for responding to
8 grievances.
9

10 8. Dr. Albert M. Castellán, DDS. c/o Chris Davis, Senior Deputy Attorney
11 General, Office of the Attorney General, 555 E. Washington Ave, Ste 3900, Las
12 Vegas, Nevada 89101. Dr. Castellán, an NDOC Dentist, will testify as will testify as
13 to his involvement in Plaintiff Carter's dental care and the practices and procedures
14 for providing dental care to inmates.
15

16 9. NDOC Custodian of Medical Records, c/o Chris Davis, Senior Deputy
17 Attorney General, Office of the Attorney General, 555 E. Washington Ave, Ste 3900,
18 Las Vegas, Nevada 89101. The Custodian of Medical Records will testify as will testify
19 with respect Plaintiff Carter's medical and dental records.
20

21 10. Any witness named by Plaintiff.
22

23 **Defendants' Expert Witnesses**

24 1. None

25 **IX. The attorneys or parties have met and jointly offer these three trial**
26 **dates:**

27 **///**
28

1. April 17-21, 2023;

2. April 24-28, 2023;

3. May 15-19, 2023.

Plaintiff's Motions in Limine

1. Motion to Exclude Shannon Carter's Criminal History

2. Motion to admit inmate request forms marked by the Plaintiff

3. Motion to admit medical kites marked by the Plaintiff.

Defendants' Motions in Limine:

1. Motion to admit medical kites marked by Defendant.

2. Motion to admit Inmate Request Forms marked by Defendants.

3. Motion to admit Carter's Inmate Search Report marked by Defendants.

4. Motion to admit Carter's Judgment of Conviction marked by Defendants.

5. Motion to admit State Court documents marked by Defendants.

6. Motion to admit NDOC Administrative Regulations marked by Defendants.

///

///

///

///

///

///

///

///

1 **X. It is estimated that the trial will take a total of 5 days:**

2 APPROVED AS TO FORM AND CONTENT:

3 **DATED** this: Friday, January 20, 2023

4
5 By /s/ Chris Davis
6 Chris Davis, Esq.
7 Deputy Attorney General – Public Safety
8 Division
9 Office of the Nevada Attorney General
10 555 East Washington Avenue, Suite 3900
11 Las Vegas, Nevada 89101
12 P: 702-486-9252
13 Attorneys for Defendants

14 By: /s/ Luke Busby
15 Luke Busby, Esq.
16 Nevada Bar No. 10319
17 316 California Ave.
18 Reno, Nevada 89509
19 775-453-0112
20 luke@lukeandrewbusbyltd.com
21 Attorney for the Plaintiff

22
23 **XI. ACTION BY THE COURT**

24 This case is set for court/jury trial on the fixed/stacked calendar on

25 _____. Calendar call will be held
26 on _____.

27 DATED: _____

28 _____
UNITED STATES DISTRICT JUDGE or

UNITED STATES MAGISTRATE JUDGE